

COURT APPOINTED COUNSEL IN CHILD WELFARE CASES

STUDY PLAN

Study Mandate

In a letter received April 28, 2014, Senator George Barker requested that the Commission on Youth study legal representation for parents in child welfare cases. This study will review Virginia's existing system for providing counsel in these cases and ascertain whether modifications or improvements to the system would advance Virginia's efforts to increase permanency.

Identified Issues

- Virginia currently provides that parents or guardians who are the subject of court petitions alleging abuse, neglect, or that their child is in need of services or supervision have the right to counsel. The parent or guardian also has the right to counsel prior to any hearing at which a parent could be subject to the loss of their parental rights. Additionally, any other adult charged with abuse or neglect of a child shall also be informed of their right to counsel.¹ If the parent or guardian is unable to afford counsel in cases of alleged abuse or neglect, or possible loss of parental rights, then the court is required to provide counsel.
- Moreover, if the child is subject to a hearing for an initial foster care plan, a foster care review, or a permanency planning hearing, the court has the discretion to consider appointing counsel to represent the parent or guardian. If a parent or guardian fails to appear or if his identity or location is unknown, the court may appoint counsel on his behalf, at its discretion.²
- Ability to pay is based on specific financial eligibility guidelines. To qualify for court-appointed counsel, the family must provide a financial statement to the court indicating its inability to pay for counsel.³
- Counsel representing a child, parent, or guardian is compensated up to \$120 in district court and up to \$158 when the juvenile court case is appealed to circuit court.⁴
- Currently, Virginia does not require any specialized training for attorneys appointed by the court to represent parents in child abuse/neglect cases.
- Child welfare cases have many steps. The timeline for permanency hearings will change on July 1, 2014. The current and future timelines are outlined below.⁵

Steps in Permanency Planning	Timelines effective until June 30, 2014	Timelines effective as of July 1, 2014
Emergency Removal Petition begins timeline and attorneys are appointed		
Preliminary Removal Hearing	Within 5 days	Within 5 days
Adjudicatory Hearing	Within 30 days	Within 30 days
Dispositional Hearing	Within 75 days from the preliminary removal order hearing	Within 60 days from the preliminary removal order hearing
Foster Care Review Hearing	Within 6 months	Within 4 months
Permanency Planning Hearing	Within 5 months	Within 5 months

¹ VA Code § 16.1-266.

² VA Code § 16.1-266 (D).

³ VA Code § 16.1-267.

⁴ VA Code § 19.2-163.

⁵ Court Improvement Program, Office of the Executive Secretary, Supreme Court of Virginia. (2008). A Handbook for Parents and Guardians in Child Dependency Cases. http://www.courts.state.va.us/courtadmin/aoc/cip/resources/handbook_for_parents_and_guardians.pdf. (April 2014).

- Child welfare law is complicated and representation of these clients can take a lot more time, making these cases less cost effective for private attorneys.

Study Activities

- Conduct extensive background and literature reviews
 - Other states' initiatives and policies
 - Best practices in court-appointed counsel compensation
 - Child Welfare League of America
 - American Bar Association
 - State Policy Database from Casey Family Programs
 - Child Welfare League of America literature
 - National Association of Criminal Defense Lawyers literature
- Review federal legislation/statutes
 - Child Abuse Prevention and Treatment Act
 - Fostering Connections to Success and Increasing Adoptions Act
- Review Virginia laws, regulations, and practices
 - Court-appointed counsel statutes
 - Guardian ad litem statutes
 - Juvenile court-appointed counsel statutes
 - Statutes pertaining to permanency, abuse and neglect,
 - Regulations addressing adjudication and child welfare
 - Child welfare regulations
 - Other related practices
- Analyze Virginia practices and data
 - Review Virginia's court-appointed counsel guidance documents
 - Virginia's Court Improvement Program
 - Virginia's Indigent Defense Commission
 - Receive information on appointment of counsel practices from a cross-section of Virginia's judicial districts (rural and urban)
 - Receive information from Virginia's Juvenile and Domestic Relations Courts
 - Review data tracked and reported quarterly by the Executive Secretary of the Supreme Court of Virginia regarding amounts paid by waiver above the initial cap to court-appointed counsel
- Interview impacted agencies and stakeholder organizations
 - Office of Executive Secretary of the Supreme Court of Virginia
 - Virginia Indigent Defense Commission
 - Virginia State Bar
 - Virginia Bar Association
 - Virginia Poverty Law Center
 - Virginia's Court Appointed Special Advocates
 - Department of Criminal Justice Services
 - Department of Social Services
 - Public Defenders
 - Guardians Ad Litem
 - Juvenile Court Judges/Court officials
 - Department of Social Services' attorneys
 - Advocacy Organizations
- Synthesize findings of literature review and interviews
- Develop findings and recommendations
- Solicit feedback on draft recommendations from impacted stakeholders
- Refine findings and recommendations
- Present findings and recommendations to the Commission on Youth
- Prepare final report